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MERVYN'S, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BARBARA HUBBARD,

Plaintiff,

v.

C.V. CENTER, INC.;
JAMBA JUICE COMPANY dba JAMBA
JUICE #603; CASUAL DINING SERVICES,
INC. dba PIZZERIA UNO; MERVYN'S
LLC; STARBUCKS CORPORATION dba
STARBUCKS COFFEE #6632;
J.C. PENNEY COMPANY, INC. dba
JCPENNEY #1274; SERLER, INC. dba
SUBWAY #31595; MANNA
DEVELOPMENT GROUP, LLC dba
PANERA BREAD CAFÉ #4284,

Defendants.

Case No. 3:08-CV-00471-JAH-LSP

**MERVYN'S, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Complaint Filed: March 13, 2008

1 Pursuant to Federal Rule of Civil Procedure 12(a), defendant Mervyn's, LLC
2 ("Mervyn's"), for itself only, hereby answers the Complaint of plaintiff Barbara Hubbard
3 ("Plaintiff") as follows:

4 1. Mervyn's admits that this action purports to involve the Mervyn's store located at
5 555 "I" Street, Chula Vista, CA 91910 ("the Mervyn's facility"). Except as expressly admitted,
6 Mervyn's denies each and every allegation in Paragraph 1 of the Complaint to the extent the
7 allegations relate to Mervyn's. Mervyn's denies for lack of sufficient knowledge, information,
8 and belief each and every allegation in Paragraph 1 that relates to entities/facilities other than the
9 Mervyn's facility.

10 2. Mervyn's admits that Plaintiff purports to seek damages, injunctive and declaratory
11 relief, and attorneys' fees and costs under various state and federal statutes as alleged in
12 Paragraph 2 of the Complaint. Except as expressly admitted, Mervyn's denies each and every
13 allegation in Paragraph 2 of the Complaint to the extent the allegations relate to Mervyn's, and
14 further denies that Plaintiff has suffered damages in any amount, or at all. Mervyn's denies for
15 lack of sufficient knowledge, information, and belief each and every allegation in Paragraph 2
16 that relates to entities/facilities other than the Mervyn's facility.

17 3. Mervyn's admits that this Court has jurisdiction over claims arising under the
18 Americans with Disabilities Act under 28 U.S.C. Sections 1331 and 1343 to the extent that such
19 claims are not otherwise barred. Except as expressly admitted, Mervyn's denies each and every
20 allegation in Paragraph 3 of the Complaint.

21 4. Mervyn's admits that Plaintiff attempts to invoke this Court's supplemental
22 jurisdiction with respect to her state law claims. Except as expressly admitted, Mervyn's denies
23 each and every allegation in Paragraph 4 of the Complaint.

24 5. Mervyn's admits that Plaintiff purports to seek declaratory relief under 28 U.S.C. §§
25 2201 and 2202. Except as expressly admitted, Mervyn's denies each and every allegation in
26 Paragraph 5 of the Complaint.

27 6. Mervyn's admits that 28 U.S.C. Sections 1391(b) and (c) pertain to venue, and that
28 Plaintiff alleges venue pursuant to 28 U.S.C. Sections 1391(b) and (c). Except as expressly

1 admitted, Mervyn's denies for lack of sufficient knowledge, information, and belief each and
2 every allegation in Paragraph 6 of the Complaint.

3 7. Paragraph 7 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 7 in its
4 entirety for lack of sufficient knowledge, information, and belief.

5 8. Paragraph 8 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 8 in its
6 entirety for lack of sufficient knowledge, information, and belief.

7 9. Paragraph 9 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 9 in its
8 entirety for lack of sufficient knowledge, information, and belief.

9 10. Mervyn's admits that it owns, operates, or leases the Mervyn's facility, and that it is
10 a limited liability corporation. Except as expressly admitted, Mervyn's denies each and every
11 allegation in Paragraph 10 of the Complaint.

12 11. Paragraph 11 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 11 in
13 its entirety for lack of sufficient knowledge, information, and belief.

14 12. Paragraph 12 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 12 in
15 its entirety for lack of sufficient knowledge, information, and belief.

16 13. Paragraph 13 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 13 in
17 its entirety for lack of sufficient knowledge, information, and belief.

18 14. Paragraph 14 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 14 in
19 its entirety for lack of sufficient knowledge, information, and belief.

20 15. Mervyn's denies for lack of sufficient knowledge, information, and belief each and
21 every allegation in Paragraph 15.

22 16. Paragraph 16 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 16 in
23 its entirety for lack of sufficient knowledge, information, and belief.

24 17. Paragraph 17 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 17 in
25 its entirety for lack of sufficient knowledge, information, and belief.

26 18. Paragraph 18 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 18 in
27 its entirety for lack of sufficient knowledge, information, and belief.
28

1 19. Mervyn's admits that the Mervyn's Facility is a retail establishment that is open to
2 the public. Except as expressly admitted, Mervyn's denies each and every allegation in
3 Paragraph 19 of the Complaint.

4 20. Paragraph 20 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 20 in
5 its entirety for lack of sufficient knowledge, information, and belief.

6 21. Paragraph 21 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 21 in
7 its entirety for lack of sufficient knowledge, information, and belief.

8 22. Paragraph 22 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 22 in
9 its entirety for lack of sufficient knowledge, information, and belief.

10 23. Paragraph 23 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 23 in
11 its entirety for lack of sufficient knowledge, information, and belief.

12 24. Mervyn's denies each and every allegation in Paragraph 24 of the Complaint for
13 lack of sufficient knowledge, information, and belief.

14 25. Mervyn's denies each and every allegation in Paragraph 25 of the Complaint to the
15 extent the allegations relate to Mervyn's. Mervyn's denies for lack of sufficient knowledge,
16 information, and belief each and every allegation in Paragraph 25 that relates to entities/facilities
17 other than the Mervyn's Facility.

18 26. Paragraph 26 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 26 in
19 its entirety for lack of sufficient knowledge, information, and belief.

20 27. Paragraph 27 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 27 in
21 its entirety for lack of sufficient knowledge, information, and belief.

22 28. Paragraph 28 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 28 in
23 its entirety for lack of sufficient knowledge, information, and belief.

24 29. Paragraph 29 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 29 in
25 its entirety for lack of sufficient knowledge, information, and belief.

26 30. Paragraph 30 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 30 in
27 its entirety for lack of sufficient knowledge, information, and belief.
28

1 31. Mervyn's denies each and every allegation in Paragraph 31 of the Complaint.

2 32. Mervyn's denies each and every allegation in Paragraph 32 of the Complaint.

3 33. Paragraph 33 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 33 in
4 its entirety for lack of sufficient knowledge, information, and belief.

5 34. Paragraph 34 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 34 in
6 its entirety for lack of sufficient knowledge, information, and belief.

7 35. Paragraph 35 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 35 in
8 its entirety for lack of sufficient knowledge, information, and belief.

9 36. Paragraph 36 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 36 in
10 its entirety for lack of sufficient knowledge, information, and belief.

11 37. Paragraph 37 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 37 in
12 its entirety for lack of sufficient knowledge, information, and belief.

13 38. Paragraph 38 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 38 in
14 its entirety for lack of sufficient knowledge, information, and belief.

15 39. Paragraph 39 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 39 in
16 its entirety for lack of sufficient knowledge, information, and belief.

17 40. Paragraph 40 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 40 in
18 its entirety for lack of sufficient knowledge, information, and belief.

19 41. Mervyn's denies each and every allegation in Paragraph 41 of the Complaint to the
20 extent the allegations relate to Mervyn's. Mervyn's denies for lack of sufficient knowledge,
21 information, and belief each and every allegation in Paragraph 41 that relates to entities/facilities
22 other than the Mervyn's facility.

23 42. Paragraph 42 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 42 in
24 its entirety for lack of sufficient knowledge, information, and belief.

25 43. Paragraph 43 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 43 in
26 its entirety for lack of sufficient knowledge, information, and belief.

27 44. Paragraph 44 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 45 in
28 its entirety for lack of sufficient knowledge, information, and belief.

1 45. Paragraph 45 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 45 in
2 its entirety for lack of sufficient knowledge, information, and belief.

3 46. Paragraph 46 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 46 in
4 its entirety for lack of sufficient knowledge, information, and belief.

5 47. Paragraph 47 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 47 in
6 its entirety for lack of sufficient knowledge, information, and belief.

7 48. Paragraph 48 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 48 in
8 its entirety for lack of sufficient knowledge, information, and belief.

9 49. Paragraph 49 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 49 in
10 its entirety for lack of sufficient knowledge, information, and belief.

11 50. Paragraph 50 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 50 in
12 its entirety for lack of sufficient knowledge, information, and belief.

13 51. Mervyn's denies each and every allegation in Paragraph 51 of the Complaint.

14 52. Mervyn's denies each and every allegation in Paragraph 52 of the Complaint.

15 53. Mervyn's denies each and every allegation in Paragraph 53 of the Complaint.

16 54. Paragraph 54 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 54 in
17 its entirety for lack of sufficient knowledge, information, and belief.

18 55. Paragraph 55 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 55 in
19 its entirety for lack of sufficient knowledge, information, and belief.

20 56. Paragraph 56 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 56 in
21 its entirety for lack of sufficient knowledge, information, and belief.

22 57. Paragraph 57 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 57 in
23 its entirety for lack of sufficient knowledge, information, and belief.

24 58. Paragraph 58 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 58 in
25 its entirety for lack of sufficient knowledge, information, and belief.

26 59. Paragraph 59 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 59 in
27 its entirety for lack of sufficient knowledge, information, and belief.
28

1 60. Paragraph 60 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 60 in
2 its entirety for lack of sufficient knowledge, information, and belief.

3 61. Paragraph 61 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 61 in
4 its entirety for lack of sufficient knowledge, information, and belief.

5 62. Paragraph 62 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 62 in
6 its entirety for lack of sufficient knowledge, information, and belief.

7 63. Paragraph 63 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 63 in
8 its entirety for lack of sufficient knowledge, information, and belief.

9 64. Paragraph 64 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 64 in
10 its entirety for lack of sufficient knowledge, information, and belief.

11 65. Paragraph 65 is unrelated to Mervyn's. Therefore Mervyn's denies Paragraph 65 in
12 its entirety for lack of sufficient knowledge, information, and belief.

13 RESPONSE TO THE FIRST CLAIM FOR RELIEF

14 **Americans with Disabilities Act of 1990**

15 Denial of "Full and Equal" Enjoyment and Use

16 (The Chula Vista Center Common Area Facility)

17 66. Mervyn's incorporates by this reference its responses to Paragraphs 1 through
18 65, inclusive, of the Complaint.

19 67-82. Paragraphs 66 through 82 are unrelated to Mervyn's. Therefore Mervyn's
20 denies Paragraphs 66 through 82 in their entirety for lack of sufficient knowledge, information,
21 and belief.

RESPONSE TO THE SECOND CLAIM FOR RELIEF

Disabled Persons Act

(The Chula Vista Center Common Area Facility)

83. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 82, inclusive, of the Complaint.

84-89. Paragraphs 83 through 89 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 83 through 89 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE THIRD CLAIM FOR RELIEF

Unruh Civil Rights Act

(The Chula Vista Center Common Area Facility)

90. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 89, inclusive, of the Complaint.

91-97. Paragraphs 90 through 97 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 90 through 97 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE FOURTH CLAIM FOR RELIEF

Denial of Full and Equal Access to Public Facilities

(The Chula Vista Center Common Area Facility)

98. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 97, inclusive, of the Complaint.

99-102. Paragraphs 98 through 102 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 98 through 102 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE FIFTH CLAIM FOR RELIEF

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Jamba Juice Facility)

103. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 102, inclusive, of the Complaint.

104-119. Paragraphs 103 through 119 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 103 through 119 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE SIXTH CLAIM FOR RELIEF

Disabled Persons Act

(The Jamba Juice Facility)

120. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 119, inclusive, of the Complaint.

121-126. Paragraphs 120 through 126 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 120 through 126 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE SEVENTH CLAIM FOR RELIEF

Unruh Civil Rights Act

(The Jamba Juice Facility)

127. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 126, inclusive, of the Complaint.

128-134. Paragraphs 127 through 134 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 127 through 134 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE EIGHTH CLAIM FOR RELIEF

Denial of Full and Equal Access to Public Facilities

(The Jamba Juice Facility)

135. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 134, inclusive, of the Complaint.

136-139. Paragraphs 135 through 139 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 135 through 139 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE NINTH CLAIM FOR RELIEF

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Pizzeria Uno Facility)

140. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 139, inclusive, of the Complaint.

141-156. Paragraphs 140 through 156 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 140 through 156 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TENTH CLAIM FOR RELIEF

Disabled Persons Act

(The Pizzeria Uno Facility)

157. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 156, inclusive, of the Complaint.

158-163. Paragraphs 157 through 163 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 157 through 163 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE ELEVENTH CLAIM FOR RELIEF

Unruh Civil Rights Act

(The Pizzeria Uno Facility)

164. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 163, inclusive, of the Complaint.

165-171. Paragraphs 164 through 171 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 164 through 171 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWELFTH CLAIM FOR RELIEF

Denial of Full and Equal Access to Public Facilities

(The Pizzeria Uno Facility)

172. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 171, inclusive, of the Complaint.

173-176. Paragraphs 172 through 176 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 172 through 176 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE THIRTEENTH CLAIM FOR RELIEF

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Mervyn's Facility)

177. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 176, inclusive, of the Complaint.

178. Paragraph 178 of the Complaint contains only assertions and conclusions of law to which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 178 that Mervyn's has in any way violated the Americans with Disabilities Act or any other state or federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph 178, Mervyn's denies each and every allegation in Paragraph 178 of the Complaint.

179. Mervyn's denies each and every allegation in Paragraph 179 of the Complaint.

1 180. Paragraph 180 of the Complaint contains only assertions and conclusions of law to
2 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 180
3 that Mervyn's has in any way violated the Americans with Disabilities Act or any other state or
4 federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in
5 Paragraph 180, Mervyn's denies each and every allegation in Paragraph 180 of the Complaint.

6 181. Paragraph 181 of the Complaint contains only assertions and conclusions of law to
7 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 181
8 that Mervyn's has in any way violated the Americans with Disabilities Act or any other state or
9 federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in
10 Paragraph 181, Mervyn's denies each and every allegation in Paragraph 181 of the Complaint.

11 182. Mervyn's denies each and every allegation in Paragraph 182 of the Complaint.

12 183. Mervyn's denies each and every allegation in Paragraph 183 of the Complaint.

13 184. Mervyn's admits that the Mervyn's Facility was designed and constructed after
14 January 26, 1992. The remaining allegations in Paragraph 184 of the Complaint contain only
15 assertions and conclusions of law to which Mervyn's is not required to respond. To the extent
16 that Plaintiff implies in Paragraph 184 that Mervyn's has in any way violated the Americans with
17 Disabilities Act or any other state or federal statute, rule, or regulation, or to the extent that
18 Plaintiff makes any factual assertions in Paragraph 184, Mervyn's denies each and every
19 allegation in Paragraph 184 of the Complaint.

20 185. Paragraph 185 of the Complaint contains only assertions and conclusions of law to
21 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 185
22 that Mervyn's has in any way violated the Americans with Disabilities Act or any other state or
23 federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in
24 Paragraph 185, Mervyn's denies each and every allegation in Paragraph 185 of the Complaint.

25 186. Mervyn's denies each and every allegation in Paragraph 186 of the Complaint.

26 187. Mervyn's denies each and every allegation in Paragraph 187 of the Complaint.

27 188. Paragraph 188 of the Complaint contains only assertions and conclusions of law to
28 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 188

1 that Mervyn's has in any way violated the Americans with Disabilities Act or any other state or
 2 federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in
 3 Paragraph 188, Mervyn's denies each and every allegation in Paragraph 188 of the Complaint.

4 189. Mervyn's denies each and every allegation in Paragraph 189 of the Complaint.

5 190. Paragraph 190 of the Complaint contains only assertions and conclusions of law to
 6 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 190
 7 that Mervyn's has in any way violated the Americans with Disabilities Act or any other state or
 8 federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in
 9 Paragraph 190, Mervyn's denies each and every allegation in Paragraph 190 of the Complaint.

10 191. Mervyn's denies each and every allegation in Paragraph 191 of the Complaint.

11 192. Mervyn's admits that Plaintiff purports to seek injunctive relief, attorneys' fees,
 12 costs, and legal expenses as alleged in Paragraph 192 of the Complaint. Except as expressly
 13 admitted, Mervyn's denies each and every allegation in Paragraph 192 of the Complaint, and
 14 denies that Plaintiff has suffered damages in any amount, or at all, and further denies that Plaintiff
 15 is entitled to any form of relief in this action.

16 193. Mervyn's admits that Plaintiff purports to seek declaratory relief as alleged in
 17 Paragraph 193 of the Complaint. Except as expressly admitted, Mervyn's denies each and every
 18 allegation in Paragraph 193 of the Complaint, and denies that Plaintiff has suffered damages in
 19 any amount, or at all, and further denies that Plaintiff is entitled to any form of relief in this
 20 action.

21 RESPONSE TO THE FOURTEENTH CLAIM FOR RELIEF

22 **Disabled Persons Act**

23 (The Mervyn's Facility)

24 194. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 193,
 25 inclusive, of the Complaint.

26 195. Paragraph 195 of the Complaint contains only assertions and conclusions of law to
 27 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 195
 28 that Mervyn's has in any way violated California Civil Code or any other state or federal statute,

1 rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph 195,
 2 Mervyn's denies each and every allegation in Paragraph 195 of the Complaint.

3 196. Paragraph 196 of the Complaint contains only assertions and conclusions of law to
 4 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 196
 5 that Mervyn's has in any way violated California Civil Code or any other state or federal statute,
 6 rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph 196,
 7 Mervyn's denies each and every allegation in Paragraph 196 of the Complaint.

8 197. Paragraph 197 of the Complaint contains only assertions and conclusions of law to
 9 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 197
 10 that Mervyn's has in any way violated California Civil Code or any other state or federal statute,
 11 rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph 197,
 12 Mervyn's denies each and every allegation in Paragraph 197 of the Complaint.

13 198. Mervyn's denies each and every allegation in Paragraph 198 of the Complaint.

14 199. Mervyn's admits that Plaintiff purports to seek damages, declaratory relief, and
 15 other remedies as alleged in Paragraph 199 of the Complaint. Except as expressly admitted,
 16 Mervyn's denies each and every allegation in Paragraph 199 of the Complaint, and denies that
 17 Plaintiff has suffered damages in any amount, or at all, and further denies that Plaintiff is entitled
 18 to any form of relief in this action.

19 200. Mervyn's admits that Plaintiff purports to seek injunctive relief and attorneys' fees
 20 as alleged in Paragraph 200 of the Complaint. Except as expressly admitted, Mervyn's denies
 21 each and every allegation in Paragraph 200 of the Complaint, and denies that Plaintiff has
 22 suffered damages in any amount, or at all, and further denies that Plaintiff is entitled to any form
 23 of relief in this action.

24 RESPONSE TO THE FIFTEENTH CLAIM FOR RELIEF

25 **Unruh Civil Rights Act**

26 (The Mervyn's Facility)

27 201. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 200,
 28 inclusive, of the Complaint.

1 202. Paragraph 202 of the Complaint contains only assertions and conclusions of law to
2 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 202
3 that Mervyn's has in any way violated the California Unruh Act or any other state or federal
4 statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph
5 202, Mervyn's denies each and every allegation in Paragraph 202 of the Complaint.

6 203. Paragraph 203 of the Complaint contains only assertions and conclusions of law to
7 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 203
8 that Mervyn's has in any way violated the California Unruh Act or any other state or federal
9 statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph
10 203, Mervyn's denies each and every allegation in Paragraph 203 of the Complaint.

11 204. Paragraph 204 of the Complaint contains only assertions and conclusions of law to
12 which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 204
13 that Mervyn's has in any way violated the California Unruh Act or any other state or federal
14 statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph
15 204, Mervyn's denies each and every allegation in Paragraph 204 of the Complaint.

16 205. Mervyn's denies each and every allegation in Paragraph 205 of the Complaint.

17 206. Mervyn's denies each and every allegation in Paragraph 206 of the Complaint.

18 207. Mervyn's admits that Plaintiff purports to seek statutory damages as alleged in
19 Paragraph 207 of the Complaint. Except as expressly admitted, Mervyn's denies each and every
20 allegation in Paragraph 207 of the Complaint, and denies that Plaintiff has suffered damages in
21 any amount, or at all, and further denies that Plaintiff is entitled to any form of relief in this
22 action.

23 208. Mervyn's admits that Plaintiff purports to seek injunctive relief and attorneys' fees
24 as alleged in Paragraph 208 of the Complaint. Except as expressly admitted, Mervyn's denies
25 each and every allegation in Paragraph 208 of the Complaint, and denies that Plaintiff has
26 suffered damages in any amount, or at all, and further denies that Plaintiff is entitled to any form
27 of relief in this action.
28

RESPONSE TO THE SIXTEENTH CLAIM FOR RELIEF

Denial of Full and Equal Access to Public Facilities

(The Mervyn's Facility)

209. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 208, inclusive, of the Complaint.

210. Paragraph 210 of the Complaint contains only assertions and conclusions of law to which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 210 that Mervyn's has in any way violated the California Health and Safety Code or any other state or federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph 210, Mervyn's denies each and every allegation in Paragraph 210 of the Complaint.

211. Paragraph 211 of the Complaint contains only assertions and conclusions of law to which Mervyn's is not required to respond. To the extent that Plaintiff implies in Paragraph 211 that Mervyn's has in any way violated the California Health and Safety Code or any other state or federal statute, rule, or regulation, or to the extent that Plaintiff makes any factual assertions in Paragraph 211, Mervyn's denies each and every allegation in Paragraph 211 of the Complaint.

212. Mervyn's denies each and every allegation in Paragraph 212 of the Complaint.

213. Mervyn's admits that Plaintiff purports to seek injunctive relief and attorneys' fees as alleged in Paragraph 213 of the Complaint. Except as expressly admitted, Mervyn's denies each and every allegation in Paragraph 213 of the Complaint, and denies that Plaintiff has suffered damages in any amount, or at all, and further denies that Plaintiff is entitled to any form of relief in this action.

RESPONSE TO THE SEVENTEENTH CLAIM FOR RELIEF

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Starbucks Facility)

214. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 213, inclusive, of the Complaint.

1 215-230. Paragraphs 214 through 230 are unrelated to Mervyn's. Therefore Mervyn's
2 denies Paragraphs 214 through 230 in their entirety for lack of sufficient knowledge, information,
3 and belief.

4 RESPONSE TO THE EIGHTEENTH CLAIM FOR RELIEF

5 **Disabled Persons Act**

6 (The Starbucks Facility)

7 231. Mervyn's incorporates by this reference its responses to Paragraphs 1 through
8 230, inclusive, of the Complaint.

9 232-237. Paragraphs 231 through 237 are unrelated to Mervyn's. Therefore Mervyn's
10 denies Paragraphs 231 through 237 in their entirety for lack of sufficient knowledge, information,
11 and belief.

12 RESPONSE TO THE NINETEENTH CLAIM FOR RELIEF

13 **Unruh Civil Rights Act**

14 (The Starbucks Facility)

15 238. Mervyn's incorporates by this reference its responses to Paragraphs 1 through
16 237, inclusive, of the Complaint.

17 239-245. Paragraphs 238 through 245 are unrelated to Mervyn's. Therefore Mervyn's
18 denies Paragraphs 238 through 245 in their entirety for lack of sufficient knowledge, information,
19 and belief.

20 RESPONSE TO THE TWENTIETH CLAIM FOR RELIEF

21 **Denial of Full and Equal Access to Public Facilities**

22 (The Starbucks Facility)

23 246. Mervyn's incorporates by this reference its responses to Paragraphs 1 through
24 245, inclusive, of the Complaint.

25 247-250. Paragraphs 246 through 250 are unrelated to Mervyn's. Therefore Mervyn's
26 denies Paragraphs 246 through 250 in their entirety for lack of sufficient knowledge, information,
27 and belief.

RESPONSE TO THE TWENTY-FIRST CLAIM FOR RELIEF

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The JCPenney Facility)

251. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 250, inclusive, of the Complaint.

252-267. Paragraphs 251 through 267 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 251 through 267 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-SECOND CLAIM FOR RELIEF

Disabled Persons Act

(The JCPenney Facility)

268. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 267, inclusive, of the Complaint.

269-274. Paragraphs 268 through 274 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 268 through 274 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-THIRD CLAIM FOR RELIEF

Unruh Civil Rights Act

(The JCPenney Facility)

275. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 274, inclusive, of the Complaint.

276-282. Paragraphs 275 through 282 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 275 through 282 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-FOURTH CLAIM FOR RELIEF

Denial of Full and Equal Access to Public Facilities

(The JCPenney Facility)

283. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 282, inclusive, of the Complaint.

284-287. Paragraphs 283 through 287 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 283 through 287 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-FIFTH CLAIM FOR RELIEF

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Subway Facility)

288. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 287, inclusive, of the Complaint.

289-304. Paragraphs 286 through 304 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 286 through 304 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-SIXTH CLAIM FOR RELIEF

Disabled Persons Act

(The Subway Facility)

305. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 304, inclusive, of the Complaint.

306-311. Paragraphs 305 through 311 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 305 through 311 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-SEVENTH CLAIM FOR RELIEF

Unruh Civil Rights Act

(The Subway Facility)

312. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 311, inclusive, of the Complaint.

313-319. Paragraphs 312 through 319 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 312 through 319 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-EIGHTH CLAIM FOR RELIEF

Denial of Full and Equal Access to Public Facilities

(The Subway Facility)

320. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 319, inclusive, of the Complaint.

321-324. Paragraphs 320 through 324 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 320 through 324 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE TWENTY-NINTH CLAIM FOR RELIEF

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Panera Bread Facility)

325. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 324, inclusive, of the Complaint.

326-341. Paragraphs 325 through 341 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 325 through 341 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE THIRTIETH CLAIM FOR RELIEF

Disabled Persons Act

(The Panera Bread Facility)

342. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 341, inclusive, of the Complaint.

343-348. Paragraphs 342 through 348 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 342 through 348 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE THIRTY-FIRST CLAIM FOR RELIEF

Unruh Civil Rights Act

(The Panera Bread Facility)

349. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 348, inclusive, of the Complaint.

350-356. Paragraphs 349 through 356 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 349 through 356 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO THE THIRTY-SECOND CLAIM FOR RELIEF

Denial of Full and Equal Access to Public Facilities

(The Panera Bread Facility)

357. Mervyn's incorporates by this reference its responses to Paragraphs 1 through 356, inclusive, of the Complaint.

358-361. Paragraphs 357 through 361 are unrelated to Mervyn's. Therefore Mervyn's denies Paragraphs 357 through 361 in their entirety for lack of sufficient knowledge, information, and belief.

RESPONSE TO PRAYER FOR RELIEF

The remaining allegations in Plaintiff's Complaint are merely prayers for relief. Mervyn's denies that Plaintiff is entitled to any remedy or relief, including the relief requested in Plaintiff's

1 Prayer For Relief Section XXXXI, including XXXXI(1)-(5), and denies that Plaintiff has suffered
2 any injury or damage in this matter.

3 AFFIRMATIVE DEFENSES

4 Mervyn's alleges the following separate and affirmative defenses, without conceding that
5 it bears the burden of proof or persuasion as to any of them.

6 FIRST AFFIRMATIVE DEFENSE

7 (Failure To State A Claim)

8 Plaintiff's Complaint, and each purported claim for relief alleged therein, fail to state a
9 claim against Mervyn's upon which relief can be granted. Plaintiff's allegations fail to set forth
10 facts adequate to support a prima facie case based upon discrimination due to disabilities.

11 SECOND AFFIRMATIVE DEFENSE

12 (Failure To State A Claim For Injunctive Relief)

13 Plaintiff's Complaint fails to state a claim upon which injunctive relief can be granted
14 against Mervyn's.

15 THIRD AFFIRMATIVE DEFENSE

16 (Lack Of Standing For Violations Not Encountered)

17 Plaintiff lacks standing to assert the Complaint, and each purported claim for relief alleged
18 therein, as to any alleged disability access violation not actually encountered by her because
19 Plaintiff cannot show injury in fact as to such alleged violations.

20 FOURTH AFFIRMATIVE DEFENSE

21 (Lack Of Standing For Claim Under Health & Safety Code Section 19955(a))

22 Plaintiff lacks standing to assert a separate cause of action against Mervyn's pursuant to
23 California Health and Safety Code Section 19955(a).

24 FIFTH AFFIRMATIVE DEFENSE

25 (Statutes Of Limitation)

26 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred, in
27 whole or in part, by the applicable statutes of limitation.
28

1 SIXTH AFFIRMATIVE DEFENSE

2 (Laches)

3 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred by the
4 doctrine of laches.

5 SEVENTH AFFIRMATIVE DEFENSE

6 (Estoppel)

7 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred by the
8 doctrine of estoppel.

9 EIGHTH AFFIRMATIVE DEFENSE

10 (Unclean Hands)

11 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred by the
12 doctrine of unclean hands.

13 NINTH AFFIRMATIVE DEFENSE

14 (Performance Of Duties)

15 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred
16 because Mervyn's fully performed all contractual, statutory, and other duties owed to Plaintiff
17 under applicable law.

18 TENTH AFFIRMATIVE DEFENSE

19 (No Authority)

20 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred
21 because, to the extent that Plaintiff alleges Mervyn's has obligations under state or federal law to
22 remove barriers at the Mervyn's Facility, the alleged obligations exceed the scope of the
23 legislated authority.

24 ELEVENTH AFFIRMATIVE DEFENSE

25 (Reliance On Issuance Of Building Permits)

26 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred
27 because local building authorities issued appropriate permits and Certificates of Occupancy for
28

1 the Mervyn's Facility, and Mervyn's had a right to rely on the issuance of the permits as
2 establishing compliance with all applicable laws, regulations, orders, and approvals.

3 TWELFTH AFFIRMATIVE DEFENSE

4 (Readily Achievable)

5 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred
6 because appropriate accessibility changes have been made and continue to be made at the
7 Mervyn's Facility to the extent such changes are readily achievable. To the extent that any
8 changes have not been made that Plaintiff contends should have been made, those changes are not
9 required under applicable law and are not readily achievable.

10 THIRTEENTH AFFIRMATIVE DEFENSE

11 (Undue Burden)

12 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred
13 because, to the extent that alterations have not been made to the Mervyn's Facility that Plaintiff
14 contends should have been made, those changes were not required under applicable law, and any
15 requirement to make those changes would impose an undue burden.

16 FOURTEENTH AFFIRMATIVE DEFENSE

17 (Modifications Not Required)

18 Plaintiff has demanded modifications to the Mervyn's Facility that are either not readily
19 achievable, technically infeasible, not required, would create an undue hardship on Mervyn's,
20 would fundamentally alter the way Mervyn's provides its goods and services, or would create a
21 risk to the health and safety of Plaintiff and others.

22 FIFTEENTH AFFIRMATIVE DEFENSE

23 (Reasonableness, Good Faith, And Non-Discrimination)

24 Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred
25 because Mervyn's acted reasonably, honestly, in good faith, and in a non-discriminatory manner
26 at all material times based on all relevant facts and circumstances known by it at the time it so
27 acted.
28

SIXTEENTH AFFIRMATIVE DEFENSE

(Not Authorized By Unruh Act)

Plaintiff is barred from obtaining relief under California Civil Code Sections 51, *et seq.* because nothing therein may be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, to any existing establishment, facility, building, improvement, or any other structure.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Discrimination)

The claim for relief alleged in Plaintiff's Complaint under California Civil Code Sections 51, *et seq.* is barred because Mervyn's' conduct is applicable alike to all persons.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Not Member Of Protected Class)

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because Plaintiff is not a member of the class of individuals that the Americans with Disabilities Act or California's disability access statutes are designed to protect.

NINETEENTH AFFIRMATIVE DEFENSE

(Disproportionate Costs)

Mervyn's alleges that the cost of some or all of the modifications to the Mervyn's Facility that Plaintiff seeks in this action is disproportionate in terms of both cost and scope to that of any alterations made within the statutory period, if any.

TWENTIETH AFFIRMATIVE DEFENSE

(Equal Access)

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred because Plaintiff has the same access to the Mervyn's Facility as non-disabled persons.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Compliance With Applicable Law)

Mervyn's alleges that the goods and services as provided at the Mervyn's Facility to the public, including Plaintiff, are accessible to and usable by persons with disabilities as required

1 under federal and state law, including without limitation, the Americans with Disabilities Act, 42
2 U.S.C. Sections 12101, *et seq.*, the Unruh Act, California Civil Code Sections 51, *et seq.*, the
3 Blind and Other Physically Disabled Persons Act, California Civil Code Section 54, *et seq.*,
4 Health and Safety Code Part 5.5, and all other disability access statutes, rules, and regulations.

5 TWENTY-SECOND AFFIRMATIVE DEFENSE

6 (Compliance With Applicable Law)

7 Mervyn's alleges that the goods and services as provided at the Mervyn's Facility to the
8 public, including Plaintiff, are accessible to and usable by persons with disabilities as required
9 under federal and state law, including without limitation, the Americans with Disabilities Act, 42
10 U.S.C. Sections 12101, *et seq.*, the Unruh Act, California Civil Code Sections 51, *et seq.*, the
11 Blind and Other Physically Disabled Persons Act, California Civil Code Section 54, *et seq.*,
12 Health and Safety Code Part 5.5, and all other disability access statutes, rules, and regulations.

13 TWENTY-THIRD AFFIRMATIVE DEFENSE

14 (Failure To Mitigate Damages)

15 Plaintiff had a duty to mitigate his damages and, to the extent he failed to do so, any
16 damages awarded to Plaintiff should be reduced accordingly.

17 TWENTY-FOURTH AFFIRMATIVE DEFENSE

18 (Adequate Legal Remedy)

19 Plaintiff is not entitled to any injunctive or equitable relief because she has adequate legal
20 remedies.

21 TWENTY-FIFTH AFFIRMATIVE DEFENSE

22 (No Irreparable Harm)

23 Plaintiff is not entitled to any injunctive or equitable relief because Plaintiff has not and
24 will not suffer irreparable harm or injury.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Improper Party)

Plaintiff's Complaint, and each purported claim for relief alleged therein, are barred to the extent Mervyn's did not and does not own, operate, lease, maintain or have any responsibility for portions of the Mervyn's Facility that allegedly fail to comply with applicable law.

PRAYER FOR RELIEF

Mervyn's does not presently know all the facts and circumstances respecting Plaintiff's claims. Mervyn's reserves the right to amend this Answer should it later discover facts demonstrating the existence of additional affirmative defenses.

WHEREFORE, Mervyn's hereby prays for the following relief:

1. That Plaintiff take nothing by reason of the Complaint and that Judgment be rendered in favor of Mervyn's;
2. That Mervyn's be awarded its attorneys' fees and the costs of suit incurred by it in this action; and
3. For such other and further relief as the Court deems just and proper.

Dated: May 12, 2008.

JONES DAY

By: s/ STEVEN M. ZADRAVECZ
Steven M. Zadravec

Attorneys for Defendant
MERVYN'S, LLC